

STATE OF MICHIGAN
IN THE SUPREME COURT
ON APPEAL FROM THE COURT OF APPEALS
(WILLIAM C. WHITBECK, P.J., JOEL P. HOEKSTRA and DONALD S. OWENS, J.J.)
AND THE COURT OF CLAIMS

ANN E. MASKERY and
ROBERT MASKERY,

Plaintiffs-Appellees,

S.C. NO: 121338

vs.

C.O.A. NO: 187738

BOARD OF REGENTS OF THE
UNIVERSITY OF MICHIGAN.

Court of Claims NO: 94-15604-CM (now MH)

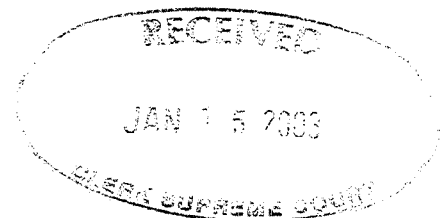
Defendant-Appellant.

BRIEF ON APPEAL OF PLAINTIFFS- APPELLEES
ANN E. MASKERY and ROBERT MASKERY

ORAL ARGUMENT REQUESTED

Robert Maskery (P17178)
In Pro Per
Attorney for Plaintiffs-Appellees
4423 Savoie Trail
West Bloomfield, MI 48323
(248) 681-9027

Dated: January 14, 2003



STATE OF MICHIGAN
IN THE SUPREME COURT
ON APPEAL FROM THE COURT OF APPEALS
(WILLIAM C. WHITBECK, P.J., JOEL P. HOEKSTRA and DONALD S. OWENS, J.J.)
AND THE COURT OF CLAIMS

ANN E. MASKERY and
ROBERT MASKERY,

Plaintiffs-Appellees,

S.C. NO: 121338

vs.

C.O.A. NO: 187738

BOARD OF REGENTS OF THE
UNIVERSITY OF MICHIGAN.

Court of Claims NO: 94-15604-CM (now MH)

Defendant-Appellant.

BRIEF ON APPEAL OF PLAINTIFFS- APPELLEES
ANN E. MASKERY and ROBERT MASKERY

ORAL ARGUMENT REQUESTED

Robert Maskery (P17178)
In Pro Per
Attorney for Plaintiffs-Appellees
4423 Savoie Trail
West Bloomfield, MI 48323
(248) 681-9027

Dated: January 14, 2003

TABLE OF CONTENTS

INDEX OF AUTHORITIES	iii-iv
STATEMENT OF THE BASIS OF JURISDICTION	1
COUNTER STATEMENT OF QUESTION PRESENTED	2
COUNTER STATEMENT OF FACTS	3-5
ARGUMENT SUMMARY	6

THE SUPREME COURT ESTABLISHED IN GREEN v. CORRECTIONS DEPARTMENT, 386 Mich. 459, THAT A PUBLIC BUILDING FOR PURPOSES OF MCLA 691.1406 IS ONE WHICH IS USED FOR PUBLIC PURPOSES WHICH ARE BENEFICIAL TO THE GOVERNING COMMUNITY. THERE ARE AMPLE STATUTORY PROVISIONS IN MICHIGAN THAT THE PROVISION OF HOUSING ACCOMMODATIONS BY STATE UNIVERSITIES TO STUDENTS RESIDING THERE FULFILLS A BENEFICIAL PUBLIC PURPOSE OF THE STATE. IT IS NOT NECESSARY THAT RESIDENCE HALLS PROVIDED BY A STATE UNIVERSITY BE ACCESSIBLE FOR USE BY THE PUBLIC AT LARGE FOR THE CONDUCT OF “GENERALIZED” PUBLIC BUSINESS. THE DEFENDANT-APPELLANT’S RELIANCE UPON THE MICHIGAN COURT OF APPEALS DECISIONS IN GRIFFIN v. DETROIT AND WHITE v. CITY OF DETROIT OR ANY PROPOSED CONSTRUCTION OF MCLA 691.1406 WHICH REQUIRES ITS RESIDENCE HALLS TO BE OPEN TO THE PUBLIC AT LARGE FOR THE PURPOSE OF CONDUCTING GOVERNMENT BUSINESS APPLICABLE TO THE GENERAL PUBLIC ONLY AS A QUALIFYING CONDITION OF THEIR BUILDING MEETING THE REQUIREMENTS OF THE STATUTORY EXCEPTION IS MISPLACED. THE SUPREME COURT HAS CONSISTENTLY HELD IN BUSH v. OSCODA AREA SCHOOLS, KEBERSKY v. NORTHERN MICHIGAN UNIVERSITY, AND BROWN v. GENESEE COUNTY BOARD OF COMMISSIONERS, THAT STATE SCHOOL ENTITIES ARE REQUIRED TO MAINTAIN SAFE BUILDING FACILITIES UNDER THE STATUTORY EXCEPTION EVEN IF SUCH FACILITIES LIMIT OR RESTRICT ACCESS TO MEMBERS OF THE PUBLIC. AS EXPRESSED BY THE SUPREME COURT OF DELAWARE IN MOORE v. WILMINGTON HOUSING AUTHORITY IN INTERPRETING A STATUTE COMPARABLE TO MICHIGAN’S PUBLIC BUILDING EXCEPTION FROM SOVEREIGN IMMUNITY FOR TORT LIABILITY, THE FOCUS OF THE COURT WITH REGARD TO PUBLIC BUILDINGS WITH LIMITED OR RESTRICTED ACCESS IS WHETHER THE INJURED

PLAINTIFF WAS WITHIN THE CLASS OF MEMBERS OF THE PUBLIC AUTHORIZED TO ENTER AND MAKE USE OF THE BUILDING IN QUESTION. THE DEFENDANT-APPELLANT IN THIS CASE CLEARLY RECOGNIZED THE RIGHT OF THE PLAINTIFF ANN E. MASKERY TO ENTER AND USE THEIR BUILDING AS A GUEST OF HER TENANT DAUGHTER.

A.	COUNTER STATEMENT OF THE STANDARD OF REVIEW	7
B.	PRIOR DECISIONS ADDRESSING WHEN PUBLIC BUILDINGS ARE “OPEN FOR USE BY MEMBERS OF THE PUBLIC” WITHIN THE MEANING OF MCLA 691.1406.	7
1.	<u>GREEN</u> v. <u>CORRECTIONS DEPARTMENT</u>	7
2.	<u>GRIFFIN</u> v. <u>DETROIT</u>	8
3.	<u>WHITE</u> v. <u>CITY OF DETROIT</u>	10
4.	<u>KEBERSKY</u> v. <u>NORTHERN MICHIGAN UNIVERSITY</u>	11
5.	<u>BROWN</u> v. <u>GENESEE COUNTY BOARD OF COMMISSIONERS</u> ..	13
C.	THE DUTY OF STATE ENTITIES TO PROVIDE SAFE PUBLIC BUILDINGS AS INTERPRETED BY THE SUPREME COURT IN <u>BUSH</u> v. <u>OSCODA AREA SCHOOLS</u> TO PROTECT MEMBERS OF THE PUBLIC USING THEM FROM DANGEROUS OR DEFECTIVE CONDITIONS AS THE BASIS OF STATE LIABILITY UNDER MCLA 691.1406.	15
D.	CONSIDERATION OF THE BETSY BARBOUR RESIDENCE HALL AS A BUILDING OPEN TO THE PUBLIC WITHIN THE MEANING OF MCLA 691.1406.	15
E.	PLAINTIFFS-APPELLEES’ PROPOSED ANALYSIS FOR CONSIDERATION OF WHEN A PUBLIC BUILDING WITH LIMITED ACCESS IS OPEN FOR USE BY MEMBERS OF THE PUBLIC FOR THE PURPOSES OF MCLA 691.1406.	19
	CONCLUSION	22
	RELIEF REQUESTED	23
	ATTACHMENT - TEXT OF CITED STATE STATUTES	23

INDEX OF AUTHORITIES

CASES

<u>Brown v. Genesee County Board of Commissioners,</u> 464 Mich. 430; 628 NW2d 471 (2001)	6, 13, 14, 18
<u>Bush v. Oscoda Area Schools,</u> 405 Mich. 716; 275 NW2d 268 (1979)	6, 12, 14, 15, 18
<u>Green v. Corrections Department,</u> 386 Mich. 459, 192 NW2d 491 (1971)	6, 7, 21
<u>Griffin v. Detroit,</u> 178 Mich. App. 302; 443 NW2d 406 (1989)	6, 8, 9, 12
<u>Hickey v. Zezulka,</u> 439 Mich. 408, 487 NW2d 106 (1992)	13
<u>Horace v. City of Pontiac,</u> 456 Mich. 744, 575 NW2d 762 (1998)	11
<u>Kebersky v. Northern Michigan University,</u> 458 Mich. 525, 582 NW2d 248 (1988)	6, 9, 11, 12, 13, 14, 18
<u>Lipsitz v. Schecter,</u> 377 Mich. 685, 142 NW2d (1966)	17
<u>Moore v. Wilmington Housing Authority,</u> 1993 Del. Lexis 77, 619 A. 2d 1166 (1993)	6, 20, 21
<u>Reardon v. Department of Mental Health,</u> 430 Mich. 398; 424 NW2d 248 (1988)	13
<u>Ross v. Consumers Power Company,</u> 420 Mich. 567; 363 NW2d 248 (1988)	12
<u>Shafer v. Ethridge,</u> 430 Mich. 398, 403, 404 NW2d 248 (1988)	13
<u>Siegel v. Detroit City Ice and Fuel Co.,</u> 324 Mich. 205; 36 NW2d 719 (1949)	17

<u>SPRIK v. Regents of the University of Michigan,</u> 43 Mich. App. 178, 204 NW2d 62 (1972)	8
<u>Wade v. Department of Corrections,</u> 439 Mich. 158; 483 NW2d 676 (1992)	7
<u>White v. City of Detroit,</u> 189 Mich. App. 526, 473 NW2d 702 (1991)	6, 10, 11, 12

STATUTES

MCLA 691.1406 (Defective Public Bldg) i, 2, 5, 6, 7, 8, 10, 12, 13, 14, 15, 17, 18, 19, 20, 21, 24	
MCLA 390.156 (Oakland University)	8, 24
MCLA 390.821 (Ferris State University)	8, 24
MCLA 390.844 (Grand Valley State University)	8, 24
MCLA 390.921a	8, 24
MCLA 125.1401, Sec. 1(8) (Michigan State Housing Development Authority)	11, 24
MCLA 691.1402, - 1403, -1404 (Defective Highways)	15, 24
MCLA 554.139	17, 24
MCLA 554.633	17, 24

COURT RULES

MCR 2.116 (7)	4, 7
MRE 201	16

PUBLICATIONS

Braden, Liability for Defective Public Buildings, 72 Mich. BJ 1144	11
---	----

STATEMENT OF THE BASIS OF JURISDICTION

Plaintiffs-Appellees accept the Defendant-Appellant's statement of the basis of the Supreme Court's jurisdiction in this case as correct.

COUNTER STATEMENT OF QUESTION PRESENTED

DOES A STATE UNIVERSITY RESIDENCE HALL OWNED AND CONTROLLED BY THE UNIVERSITY FOR THE PUBLIC PURPOSE OF PROVIDING HOUSING TO ITS RESIDENT TENANT STUDENTS QUALIFY AS A PUBLIC BUILDING OPEN FOR USE BY MEMBERS OF THE PUBLIC WITHIN THE MEANING OF MCLA 691.1406 IF SUCH BUILDING IS OPEN FOR USE BY RESIDENT STUDENTS FOR ITS PUBLIC PURPOSE AND IF NON-RESIDENT MEMBERS OF THE PUBLIC ARE FREQUENTLY OBSERVED INSIDE THE BUILDING AND THE DEFENDANT ENABLES AND PERMITS SUCH NON-RESIDENT MEMBERS OF THE PUBLIC TO SECURE READY ACCESS AND AUTHORIZED USE OF ITS BUILDING AS GUESTS OF ITS TENANTS BY MEANS OF A TELEPHONE CALL BOX INSTALLED AT THE BUILDING ENTRANCE AND LINKED TO THE TENANTS' ROOMS, NOTWITHSTANDING THE FACT THAT THE ENTRANCE DOOR TO THE BUILDING MAY BE LOCKED.

The Court of Appeals by its decision of January 11, 2002 on remand from the Supreme Court said "Yes."

The Plaintiffs-Appellees contend the answer should be "Yes."

Defendant-Appellant contends the answer should be "No."

COUNTER STATEMENT OF FACTS

A. COUNTER STATEMENT OF MATERIAL FACTS

In their verified Complaint, the Plaintiffs alleged: that the Defendant owned, operated, possessed and controlled the Betsy Barbour Residence Hall and its adjacent premises (Complaint, Paragraph 8, Appellant's Appendix at page 15a); that at the time of Plaintiff Ann Maskery's accidental fall, the Betsy Barbour Residence Hall was a public building open for use by members of the public and as such the Defendant University was not immune from liability in tort pursuant to the Michigan statutory public building exception to governmental immunity (Complaint, Paragraphs 5 and 6, Appellant's Appendix at p. 15a); that the Defendant was responsible for the ownership, installation, repair and maintenance of the Maynard Street entrance stairway and telephone facility to the Defendant's Residence Hall and created a hazardous, defective, and dangerous condition in the Betsy Barbour Residence Hall premises by installing the phone near a narrow step of the stairway for which the Defendant was liable (Complaint, Paragraphs 10-12, Appellant's Appendix at page 16a); that Ann Maskery stepped back on the stairway in order to allow another individual to use the telephone, but due to the defective and dangerous condition of the narrow step located by the telephone, she lost her balance, fell down the stairway and struck the sidewalk below (Complaint, Paragraph 8, Appellant's Appendix at p. 15a); that as a direct and proximate result of the dangerous and defective conditions existing at the Betsy Barbour Residence Hall premises, the Plaintiff Ann Maskery sustained a permanent and serious personal injury by way of a severely fractured left wrist and arm (Complaint, Paragraph 14, Appellant's Appendix at p. 16a).

The Plaintiff Ann Maskery was attempting to secure access to the Defendant's Residence

Hall at the time of her injury to assist her resident student daughter, Susan Maskery, in vacating her leased room at the end of the Fall/Winter term as required by the Defendant University by transporting her clothing and other personal property to her permanent home residence in West Bloomfield, Michigan until her return to the Betsy Barbour Residence Hall at the start of the next school semester.

In response to the Defendant's Motion for Summary Disposition of the Plaintiff's suit based on MCR 2.116(7) that their claim was barred because of immunity granted by law (Motion for Summary Disposition, Appellant's Appendix, at page 19a), the Plaintiff's daughter, Susan Maskery, filed an Affidavit relating that she had frequently observed non-residents within the Betsy Barbour Residence Hall during her residence there and was aware that delivery people and other non-resident visitors used the entrance stairway and telephone to the Defendant's Residence Hall and their access had never been restricted to her knowledge (Affidavit, Appellant's Appendix at page 34a).

Plaintiffs-Appellees question how the photographs submitted by the Defendant (Photographs, Appellant's Appendix at page 33a) demonstrate as alleged in Footnote 1, at page 3 of the Defendant-Appellant's Brief that "the Betsy Barbour Residence Hall retained its characteristics of an old refurbished home and provided restricted access housing for a small number of female University of Michigan students." In point of actual fact, though not part of the record, the Betsy Barbour Residence Hall provides room accommodations for one hundred and twenty (120) women residents and consists of five building levels, including the basement floor.

B. COUNTER STATEMENT OF MATERIAL PROCEEDINGS

The Defendant-Appellant's Statement of Material Proceedings does not include reference to the fact that the question of whether the elevated stairway entrance from which the Plaintiff Ann

Maskery fell was a part of the Defendant's building as previously litigated by the parties to this Appeal. The ruling by the Court of Appeals in their Unpublished Decision of January 11, 2002 (Appellant's Appendix at pages 67a and 71a) that the stairway to the Betsy Barbour Residence Hall was a part of the Defendant's building for purposes of applying the Public building exception was not challenged by the Defendant-Appellant in their Application for Leave to Appeal that decision.

As noted in the Appellant's Statement of Material Proceedings at page 7 of their Brief, the current Appeal is limited to the question of whether the University Residence Hall at which Plaintiff was injured is "open for use by members of the public" within the meaning of MCLA 691.1406 (Supreme Court Order Granting Leave to Appeal, Appellant's Appendix at page 73a).

ARGUMENT SUMMARY

THE SUPREME COURT ESTABLISHED IN GREEN v. CORRECTIONS DEPARTMENT, 386 Mich. 459, THAT A PUBLIC BUILDING FOR PURPOSES OF MCLA 691.1406 IS ONE WHICH IS USED FOR PUBLIC PURPOSES WHICH ARE BENEFICIAL TO THE GOVERNING COMMUNITY. THERE ARE AMPLE STATUTORY PROVISIONS IN MICHIGAN THAT THE PROVISION OF HOUSING ACCOMMODATIONS BY STATE UNIVERSITIES TO STUDENTS RESIDING THERE FULFILLS A BENEFICIAL PUBLIC PURPOSE OF THE STATE. IT IS NOT NECESSARY THAT RESIDENCE HALLS PROVIDED BY A STATE UNIVERSITY BE ACCESSIBLE FOR USE BY THE PUBLIC AT LARGE FOR THE CONDUCT OF "GENERALIZED" PUBLIC BUSINESS. THE DEFENDANT-APPELLANT'S RELIANCE UPON THE MICHIGAN COURT OF APPEALS DECISIONS IN GRIFFIN v. DETROIT AND WHITE v. CITY OF DETROIT OR ANY PROPOSED CONSTRUCTION OF MCLA 691.1406 WHICH REQUIRES ITS RESIDENCE HALLS TO BE OPEN TO THE PUBLIC AT LARGE FOR THE PURPOSE OF CONDUCTING GOVERNMENT BUSINESS APPLICABLE TO THE GENERAL PUBLIC ONLY AS A QUALIFYING CONDITION OF THEIR BUILDING MEETING THE STATUTORY EXCEPTION IS MISPLACED. THE SUPREME COURT HAS CONSISTENTLY HELD IN BUSH v. OSCODA AREA SCHOOLS, KEBERSKY v. NORTHERN MICHIGAN UNIVERSITY, AND BROWN v. GENESEE COUNTY BOARD OF COMMISSIONERS, THAT STATE SCHOOL ENTITIES ARE REQUIRED TO MAINTAIN SAFE BUILDING FACILITIES UNDER THE STATUTORY EXCEPTION EVEN IF SUCH FACILITIES LIMIT OR RESTRICT ACCESS TO MEMBERS OF THE PUBLIC. AS EXPRESSED BY THE SUPREME COURT OF DELAWARE IN MOORE v. WILMINGTON HOUSING AUTHORITY IN INTERPRETING A STATUTE COMPARABLE TO MICHIGAN'S PUBLIC BUILDING EXCEPTION FROM SOVEREIGN IMMUNITY FOR TORT LIABILITY, THE FOCUS OF THE COURT WITH REGARD TO PUBLIC BUILDINGS WITH LIMITED OR RESTRICTED ACCESS IS WHETHER THE INJURED PLAINTIFF WAS WITHIN THE CLASS OF MEMBERS OF THE PUBLIC AUTHORIZED TO ENTER AND MAKE USE

OF THE BUILDING IN QUESTION. THE DEFENDANT-APPELLANT IN THIS CASE CLEARLY RECOGNIZED THE RIGHT OF THE PLAINTIFF ANNE MASKERY TO ENTER AND USE THEIR BUILDING AS A GUEST OF HER TENANT DAUGHTER.

A. COUNTER STATEMENT OF THE STANDARD OF REVIEW.

As stated in the Supreme Court decision of Wade v. Department of Corrections, 439 Mich 158 at pp. 162-163; 483 NW2d 676 (1992), judgment that a claim is barred because of immunity granted by law in response to a Motion for Summary Disposition pursuant to MCR 2.116 (c)(7) requires consideration of all documentary evidence filed or submitted by the parties. All well-pleaded allegations are accepted as true, and construed most favorably to the non-moving party.

B. PRIOR DECISIONS ADDRESSING WHEN PUBLIC BUILDINGS ARE “OPEN FOR USE BY MEMBERS OF THE PUBLIC” WITHIN THE MEANING OF MCLA 691.1406.

1. GREEN v. CORRECTIONS DEPARTMENT 386 Mich. 459; 192 NW2d 491 (1971).

In the Green decision, the Supreme Court ruled as follows at page 464 in responding to the Defendant’s contention that it was statutorily immune from a jail inmate’s suit for personal injury because the Detroit House of Correction was not a public building open to the public-at-large -

“A public building has been defined as: a building owned by a public body, particularly if it is used for public offices or for other public purposes. Ballentine’s Law Dictionary, 3d ed. Thus, a public building is one which exists as a benefit to the whole community and is operated and maintained by the governing body of that same community. (§Cleveland v. City of Detroit (1948), 322 Mich 172; Anno: What is “public buildings,” 19ALR543. The Detroit House of Correction is such a building.”

There are ample provisions throughout the laws of the State of Michigan which authorize State Universities to acquire, alter, erect and maintain buildings as residence halls for their students.

Oakland University (MCLA 390.156); Ferris State University (MCLA 390.821); Grand Valley State University (MCLA 390.844). The State of Michigan also recognizes the financing of educational facilities such as dormitories or other housing at private or non-public, non-profit institutions of higher learning as serving a valid public purpose. MCLA 390.921a. We do not think there is any question or doubt in this case that the Defendant University's provision of housing accommodations for its student tenants serves a valid public purpose (Defendant's Brief In Support of Motion For Summary Disposition, Appellant's Appendix at page 25a). SPRIK v. Regents of the University of Michigan, 43 Mich. App. 178, 204 NW2d 62 (1972), affirmed 390 Mich. 84, 210 NW2d 332. We suspect as well that the Defendant University would vigorously assert that its provision of housing for its students serves a valid public purpose and does not constitute an illegal or ultra vires action on the part of the University because other Government business applicable to the public at large which is entirely unrelated to providing housing accommodations and board to resident students is not also conducted within its residence halls.

2. GRIFFIN v. DETROIT, 178 Mich. App. 302, 443 NW2d 406 (1989).

In the 1989 Court of Appeals decision in Griffin, the Plaintiff alleged that her decedent suffered a wrongful death when she slipped and fell in the bathtub and/or bathroom of her apartment within a low-income housing building owned and operated by the City of Detroit because the City had failed to install and maintain protective railings in the bathtub area. In ruling that the Plaintiff's apartment unit did not qualify as a public building exempt from immunity under MCLA 691.1406, the Court of Appeals held at page 306 that the decedent's apartment was available under lease as her private residence for her sole use, and that "in applying the public building exception, the focus is on the accessibility of members of the general public [emphasis added] to the situs of the accident."

As later determined by this Court in Kebersky v. Northern Michigan University, 458 Mich. 525, 582 NW2d 828 (1989), the principle of law quoted from the Griffin decision was determined to be incorrect.

More importantly, for purposes of this case, the Plaintiff Ann Maskery did not suffer her injury within the confines of her student daughter's leased room. The Plaintiffs have alleged that the Defendant was responsible for establishing and controlling a dangerous and defective building condition at the entrance stairway to their building and that the Plaintiff Ann Maskery's injury was caused by such building condition.

Unlike the Plaintiff's decedent in Griffin who had the sole, private use of her apartment within a housing project building, a student tenant at the University of Michigan's Betsy Barbour Residence Hall had no control over non-resident members of the public who secured access to the building through the other 119 resident tenants. Student tenants of the Betsy Barbour Residence Hall who leased their room based on double or triple occupancy could not control members of the public admitted to their room by their co-tenant(s).

Throughout their Brief, the Defendant infers that a resident tenant at the Betsy Barbour Residence should be able to expect the same freedom from intrusion upon their personal privacy that they might experience in their own private home residence (Defendant's Brief at pages 25-26). The Defendant fails to point out that their Residence Hall Lease (Lease Agreement, Appellant's Appendix at p. 302) requires the student to abide by the rules, regulations and policies of the Housing Division, including the Living at Michigan Credo and Guidelines For Community Living at the University of Michigan residence halls. A typical apartment lease does not contain rules and guidelines for Community Living like those imposed by the University of Michigan at its residence

halls. If a newly arrived undergraduate tenant expects to live in a U of M Residence Hall such as the Betsy Barbour Residence Hall with the same level of individual privacy she experiences in her private home residence, she is in for a shock when she first meets with her co-tenant(s) in their assigned residence room to agree upon what space within a small common area will be allotted as their respective living accommodations. The student residents at the Betsy Barbour Residence Hall shared a common-use bathing and lavatory facility on each of three resident room floors, as well as common-use lounges and a dining hall within the building during the time-frame of the Plaintiff Ann Maskery's injury. For the reasons expressed above, the typical student tenant at the Betsy Barbour Residence Hall would not expect or enjoy the individual privacy of someone living as the sole occupant of an apartment.

3. WHITE v. CITY OF DETROIT, 189 Mich. App. 526, 473 NW2d 702 (1991)

In the 1991 Court of Appeals decision, the Plaintiff White, was a tenant of a low-income public housing facility owned and operated by the City of Detroit who injured his hip when he stepped into a hole in a brick patio located within the project. There was a factual dispute regarding whether the patio was directly adjacent to the residential building involved or separated from the building somewhat. The Plaintiff White argued that the public building exception applied because the patio was accessible to the public and was often used by persons who were not residents of the housing project facility. The White decision held that the residential housing facility involved was not a public building within the meaning of MCLA 691.1406 as a matter of law, and because the building itself was not a public building, the patio could not fall within the exception. In the words of the White decision at page 529 - "Because the building in the instant case was a residential housing facility containing private housing units, and was not a building used for public offices or

a public purpose, the public building exception does not apply.” The ruling in the White decision that public housing does not serve a public purpose has been criticized as being “specious.” Braden, Liability for Defective Public Buildings, 72 Mich BJ 1144 at Footnote 19 on page 1148. The State Legislature has declared that the provision of low-income housing under the Michigan State Housing Development Authority constitutes a necessary program and serves a valid public purpose. MCLA 125.1401 Sec. 1(8). We interpreted this Court’s pointed refusal to concur in the judicial rationale of the White decision at page 535 of the Kebersky decision as meaning the Supreme Court does not believe the legal rationale stated in the White decision is valid, and that the correct analysis in that case should have been whether the injury sustained was caused by a defective condition of the building itself as articulated in the Supreme Court decision of Horace v. City of Pontiac, 456 Mich. 744, 575 NW2d 762 (1998).

4. KEBERSKY v. NORTHERN MICHIGAN UNIVERSITY, 458 Mich. 524; 582 NW2d 828 (1998).

In their Brief at page 18, counsel for the Defendant propose an analysis of how to determine whether a building will be “open for use by members of the public” within the meaning of the statute as follows.

“The first level of analysis is to consider the access members of the public have relative to the building in question. The analysis would take into account the reasonable expectation of members of the public of their right to enter. The reasonable expectation would be based upon an objective belief that the building in question was one in which citizens with legitimate public interests or public business would be able to engage in discourse or complete transactions. It is an expectation that the government has made the building suitably safe for the business of the public at large.” [Emphasis added]

At page 19 of its Brief, the Defendant-Appellant proposes the following criteria for whether a public building is subject to the statutory exception:

“3. Use of building for face to face public business or discourse.

A third indicator is the nature or use to which the building is put. The courts would examine if the function of the building serves a public or private purpose. Described differently; is the building serving some generalized [emphasis added] public purpose such as a forum for public business or discourse. Unless it is serving such a function, the building would not be considered “open for use by members of the public.”

That the building is open for face to face use by members of the public asks the question of whether the governmental agency is conducting a business in the building for which the public would have a public reason to participate in person...”

The Supreme Court’s decision in Kebersky is notable in that it criticized lower court case decisions generally which held that a building within the meaning of MCLA 691.1406 had to be open to members of the general public [Emphasis Added]. The Court observed that such cases were wrong in that they were construing the statute’s application narrower than the statutory language allows. The statute only requires the building to be open to members of the public and can apply to buildings with limited access. Both the Griffin decision (178 Mich. App. at p. 306) and the White decision (189 Mich. App. at page 526 - Headnote) - incorrectly stated that the housing units involved had to be accessible to the general public.

The Kebersky decision cited the Supreme Court’s prior decision in Bush v. Oscoda Area Schools, 405 Mich. 716, 275 NW2d 268 (1979) as demonstrating the principle that a building did not have to be open to members of the general public to come within the statute. The Court observed in the Kebersky decision at page 534 -

“In Bush, we held that the public building exception applied to an injury sustained in a high school chemistry class. Very few people could legitimately have been in this classroom. This particular classroom was not accessible by members of the general public.”

There have been numerous other decisions issued by the Supreme Court post Ross v. Consumers Power Company, 420 Mich. 567; 363 NW2d 641 (1984) in which the Supreme Court without exception reviewed the merits of an injury or death claim allegedly due to a defective or dangerous condition in a public building which was obviously not open for use by the public at large. Refer for example to Reardon v. Department of Mental Health, 430 Mich. 398; 424 NW2d 248 (1988); Shafer v. Ethridge, 430 Mich. 398, 403, 404 NW2d 248 (1988); Hickey v. Zezulka, 439 Mich. 408; 487 NW2d 106 (1992).

Under the standard of analysis now proposed by the Defendant's counsel, Michigan university students injured as a result of defective or dangerous conditions in a public school facility, such as the Betsy Barbour Residence Hall, could not rely upon the statutory building exception to immunity provided by MCLA 691.1406 unless they could demonstrate that such facility was open as a place for the public at large to use as a forum for discussion of public issues or as a building within which it was necessary for the public at large to engage in face to face transactions with State entity personnel regarding government business involving some generalized public purpose which we interpret to mean government business applicable to the general public only. We believe the standard of analysis now proposed by counsel for the Defendant-Appellant as appropriate for interpretation of MCLA 691.1406 to be squarely in conflict with this Court's declaration in Kebersky that interpreting the statute to require access to public buildings by the public at large for purposes applicable to the general public only imposes a requirement that is narrower than the statute allows.

5. BROWN v. GENESEE COUNTY BOARD OF COMMISSIONERS, 464 Mich. 430, 628 NW2d 471 (2001).

The Brown decision by the Supreme Court reaffirmed the principle that the statutory

provisions of MCLA 691.1406 also apply to public buildings with limited access to members of the public. As the Court pronounced in Brown -

“We would reaffirm that a jail is open for use by members of the public. Family, friends and attorneys may generally visit inmates. Members of the public may also enter a jail for other reasons, e.g., to apply for a job or make a delivery. The fact that public access to a jail is limited does not alter our conclusion. Schools fall within the exception even though members of the public may not enter whenever and wherever they please. See *Sewell v. Southfield Public Schools*, 456 Mich. 670; 576 NW2d 153 (1988); *Bush v. Oscoda Area Schools*, 405 Mich. 716; 275 NW2d 268 (1979). The public building exception applies to buildings with limited access, including schools and prisons. Kebersky, *supra* at 534; *Steele v. Dept. of Corrections*, 215 Mich. App. 710, 715; 546 NW2d 725 (1996).”

We do not read the Brown decision to mean that family and friends who visit public buildings like jails with limited public access for social reasons only disqualify the jail from consideration as a public building open for use by members of the public within the meaning of MCLA 691.1406. We interpret the Kebersky and Brown decisions to mean that if members of the public are authorized use of a public building for its intended purposes even though their access to and use of the building may be limited, the building qualifies as a public building open for use by members of the public within the meaning of MCLA 691.1406. Such construction implements the public policy of the State to provide safe public buildings under its control for members of the public who make authorized use of them. While citing the Kebersky and Brown decisions for the principle that public buildings must be open for use by members of the public, the Defendant-Appellant gives no recognition to the fact that its Residence Hall was a public building serving a public purpose and was open for use on a daily basis, twenty-four hours a day, during school sessions for its assigned public purpose by a significant number of members of the public, namely its resident student tenants.

Further, the Defendant-Appellant did not restrict or limit visiting guests of its tenants from their access to or use of their public building but invited them to secure ready access and use of their building through their tenants by means of a phone facility at the building entrance.

- C. THE DUTY OF STATE ENTITIES TO PROVIDE SAFE PUBLIC BUILDINGS AS INTERPRETED BY THE SUPREME COURT IN, BUSH v. OSCODA AREA SCHOOLS, 405 Mich. 716, 275 NW2d 268 (1979) TO PROTECT MEMBERS OF THE PUBLIC USING THEM FROM DANGEROUS OR DEFECTIVE CONDITIONS AS THE BASIS OF STATE LIABILITY UNDER MCLA 691.1406.

In the Bush decision, the Supreme Court stated that it construed the defective building cause of action (MCLA 691.1406) in the same manner as the defective highway provision (MCL 691.1402-04). Governmental agencies are subject to liability for a dangerous or defective condition of public buildings under their control because of improper design, faulty construction, or the absence of safety devices as well as a failure to repair and maintain them properly. Under the statutory exceptions for immunity, the Legislature intended to protect the public from injury by imposing upon governmental agencies the duty to maintain safe public places, whether such places are public highways or public buildings.

- D. CONSIDERATION OF THE BETSY BARBOUR RESIDENCE HALL AS A BUILDING OPEN TO THE PUBLIC WITHIN THE MEANING OF MCLA 691.1406.

The Defendant's Residence Hall is a public building which is operated as a State educational facility for the purpose of providing housing accommodations for student tenants attending the university. It charges those students rent or consideration for their accommodations and requires them to sign lease agreements.

The Betsy Barbour Residence Hall is not comparable to a cottage in a secluded forest glen. It was one of twelve Residence Halls which were maintained by the Defendant on the main (Central

and Hill) campus of the University of Michigan in Ann Arbor. Two other residence halls are maintained on the North Campus of the University of Michigan, Ann Arbor. While it is a relatively small in providing room accommodations for 120 women tenants, that number is not insignificant. In a 1992-1993 Orientation Guide For Parents, the Defendant stated that it provided accommodations for approximately 10,000 residence hall residents and that 90% of all newly entering students are placed in a double or triple occupancy room.

What is significant about the prior consideration is that students attending the University of Michigan in Ann Arbor do tend to visit other residents in the Defendant's residence halls for social and/or academic reasons, and students residing on a temporary basis in Ann Arbor while attending the University of Michigan number in the thousands.

Significant portions of the Residence Halls maintained and controlled by the Defendant are dedicated to the common use of the tenants, such as computer rooms, libraries, lounges, dining halls, laundry facilities, lavatory and bathing facilities, hallways, and building entrance facilities. As one might expect on a campus the size of the University of Michigan's in Ann Arbor and the number of students attending school there without commuting to their permanent home residences, there is a substantial degree of ingress/egress traffic by student members of the public going in and out of the Defendant's Residence Halls during the course of a day while school is in session, including the Betsy Barbour Residence Hall.

Although the foregoing factual considerations are not part of the record in this case, the Plaintiffs-Appellees submit that this Court can take judicial notice under MRE 201 of the building characteristics, room accommodations, and student traffic in and out of Residence Halls, inclusive of student visitors, typical of Residence Halls maintained at major State universities like those of the

University of Michigan in Ann Arbor, Michigan.

Under Michigan law, a landlord/lessor has the same duty of care to a tenant's guests as it does to its tenants to keep in safe condition any portion of the building under its control, such as exterior stairway facilities used in common by tenants. Lipsitz v. Schechter, 377 Mich. 685 at pp. 687-688, 142 N.W. 2d (1966); Siegel v. Detroit City Ice and Fuel Co., 324 Mich. 205, 36 NW2d 719 (1949). This principle of tort law is well established in Michigan and elsewhere as applicable to lessors leasing their property.

In addition to the case law, Michigan statutory law imposes a duty on the lessor of residential premises to maintain the premises and all common areas as fit for the use intended by the parties and to keep the premises in reasonable repair during the lease term. MCLA 554.139. Further, rental agreements cannot include provisions which exculpate the lessor from liability for the lessor's failure to perform, or negligent performance of a duty imposed by law; or which permit waiver of a remedy available to the parties when the premises are in a condition which violates the covenants of fitness and habitability required under MCLA 554.139. Refer to MCLA 554.633.

It is against this background of established law and policy in Michigan relative to a landlord's obligation to maintain its property that the Defendant argues that it has no liability to provide a safe building for the public's use under MCLA 691.1406 if it is not necessary for the public at large to enter and use the building to engage in face to face discussion with State entity personnel concerning a government business transaction which applies to the general public only, or if the public at large does not use its building as a public forum place to engage in discourse about government issues.

Why should a member of the public who visits or uses a State public building whose recognized public purpose is to provide housing accommodations to students attending the university

as tenants be required to establish that she or he expected to enter and use that building for purposes entirely unrelated to the public purpose and function of that building. Given the established public purpose and function of the Defendant's building, the Defendant-Appellant's Proposed Analysis and Methodology at pp. 16-26 of their Brief appears to impose bright line non-sequitur requirements designed to automatically disqualify their Residence Hall from consideration as a public building within the safe building protection of MCLA 691.1406.

The Defendant's proposed Analysis and Methodology would provide an expedient way of having their educational facilities excluded from coverage under the public building statutory exception but would be completely inconsistent with the appropriate construction of MCLA 691.1406 as articulated by the Supreme Court in the Kebersky and Brown decisions that school building facilities fall within the statutory exception even though the public at large may not enter and use such facilities whenever and wherever they please. Considering the degree to which members of the public use the Defendant's Residence Halls on a daily basis while school is in session, we question whether this Court or the State Legislature would approve of the Defendant's proposed construction of MCLA 691.1406 in view of this State's long standing acceptance of the Bush decision that a school classroom with limited access to members of the public constitutes a public building protected under the statute.

While we understand and appreciate why the courts would consider a public building which is closed for renovations as one which was not open for use by members of the public or a State building as to which an injured member of the public was clearly not authorized to enter and use for its intended purpose, such as an electrical substation or a wastewater treatment plant, as being outside the statutory exceptions, those circumstances do not apply to the Plaintiffs' case.

Contrary to the stated criteria of this Court in Kebersky and Brown, the Defendant-Appellant now proposes to exclude a public building serving a public purpose in providing housing accommodations to student tenants and which is open for use by these tenants and their visiting guests on an unrestricted basis from the safe building exemption to Government immunity under MCLA 691.1406 if the public at large do not also use the building for a public purpose applicable to the general public only. Their proposed construction of MCLA 691.1406, if adopted, would mark a radical departure from prior decisions of this Court in their application of the statutory exception to State public buildings which are open for use by members of the public whose access to and use of the building is authorized even though the building is not also used by the public at large for public purposes applicable to the general public only.

The Plaintiff Ann Maskery was injured while attempting to use the entrance facilities which the Defendant installed as part of its building and invited her to use on an unrestricted basis to gain authorized entry and use of their building as a tenant's guest. She was injured while attempting to assist her daughter tenant in vacating her room at the end of the fall school semester as required by the Defendant of its Residence Hall tenants. Irrespective of whether the entrance door to the Defendant's Residence Hall may have been locked, the focus of the Court's inquiry in this case should be whether the Plaintiff Ann Maskery was within the class of members of the public who were authorized to gain entry and use of the Defendant's Residence Hall for its intended purposes. She was without question. Refer to page 20 of the Defendant's Brief - "...not all individuals were barred from entry (tenants could certainly invite guests).

E. PLAINTIFFS-APPELLEES' PROPOSED ANALYSIS FOR CONSIDERATION OF WHETHER A PUBLIC BUILDING WITH LIMITED ACCESS IS OPEN FOR USE BY MEMBERS OF THE PUBLIC FOR THE PURPOSES OF MCLA 691.1406.

In the case of Moore v. Wilmington Housing Authority, 1993 Del. Lexis 77, 619 A. 2d 1166 (1993), the Delaware Supreme Court was confronted with the issue of whether a leased dwelling unit owned by a public housing authority was a “public building” and therefore within the statutory category of facilities as to which the doctrine of sovereign immunity would be waived in Delaware as a bar to the Plaintiff Moore’s personal injury lawsuit against the housing authority for its alleged negligence. The Plaintiff Moore was allegedly injured when a ceiling collapsed in a rental unit she was visiting. The lower court had dismissed the Plaintiff Moore’s suit on the ground of governmental immunity pursuant to the Delaware Tort Claims Act because the residence in question was not open to the general public and was therefore not a “public building” for purposes of the applicable statute. The Delaware Supreme Court observed that its legislature had not defined the meaning of the term “public building” for purposes of the Delaware statute subjecting government entities to liability for negligent acts or omissions causing property, bodily injury, or death as exceptions to governmental immunity in the construction, operation, or maintenance of any public building...” [The Michigan legislature has not defined the term “public building” for the purpose of MCLA 691.1406 either]. The Delaware Supreme Court proceeded to review the case law in Michigan at some length as it applied to MCLA 691.1406. The Court observed that their statutory construction required consideration of the public policy character of the building, and in that case the public policy stemmed from the fact that the building was operated and maintained in furtherance of a governmental objective, viz., low-cost housing.

The Delaware Supreme Court then ruled as follows:

The public purpose ingredient of the definition leads to the conclusion that a building is necessarily one operated and maintained

for a public purpose if its function is to benefit the public or the community. *Green v. State Corrections Department*, 386 Mich. 459, 192 NW2d 491, 493 (1971). The legislative creation, funding and grant of responsibility to a housing authority are for public purposes. Providing low-cost housing to needy citizens constitutes legitimate public policy for a legislative body. Thus the creation, funding and grant of authority to the WHA in this case constitute a public purpose for the benefit of the community at large. That fact, coupled with other indices of a public mission (e.g. operation and maintenance) combine to compel the conclusion that such a building is a “public building.”

It does not follow, however, that there must be freedom of access by the general public to a building (and for this purpose an apartment unit within a larger building qualifies as a building) in order for it to constitute a public building. In our view, a building which otherwise qualifies as a public building and is open to those members of the public who use it for its intended purpose is a “public building” for purposes of 10 Del. C. § 4012 (2). This is true even if access is limited only to those members of the public (e.g. tenants and their guests who use it for its intended purpose). Here the dwelling unit was one to which there was only limited access (just as there would be to portions of court buildings, schools, prisons or certain government offices), but it is a structure enclosed by walls and covered by a roof, it is operated and maintained by a governmental entity for a public purpose, and it is open to those members of the public (and their guests) who use it for its intended purpose. Accordingly, we hold that the residential housing unit in this case qualifies under our definition of “public building” under 10 Del. C. § 4012 (2). Therefore, the doctrine of sovereign immunity is inapplicable.

The analysis performed by the Delaware Supreme Court in Moore is consistent with prior decisions by the Supreme Court of Michigan in their construction of the application of MCLA 691.1406 and may be equally applied to the facts of this case and the Defendant’s Residence Hall as a “public building under its control open for use by members of the public” within the meaning of MCLA 691.1406.

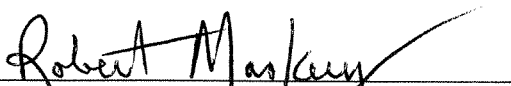
CONCLUSION

The Defendant's Residence Hall was a public building owned, operated, and controlled by the Defendant as an educational facility for the public purpose of providing housing accommodations to the students attending their University. The Plaintiff Ann Maskery was injured as the result of an alleged dangerous and defective condition at the entrance stairway facilities controlled by the Defendant. She was injured while using the entrance facilities which Defendant invited her to use as a member of the public and guest of her Residence Hall tenant daughter to gain authorized entry and use of their building for its intended purpose. Based on the foregoing considerations we respectfully submit that the decision of the Court of Appeals dated January 11, 2002 should be sustained.

REQUEST FOR RELIEF

WHEREFORE, the Plaintiffs-Appellees respectfully request that this Court deny the Appeal of the Defendant-Appellant in this matter so that this case may proceed to trial on its merits before the Court of Claims.

Respectfully Submitted,

By: 
Robert Maskery (P17178)

Dated: January 14, 2003

ATTACHMENT - TEXT OF STATE STATUTES CITED IN BRIEF

1. MCLA 691.1406
2. MCLA 390.156
3. MCLA 390.821
4. MCLA 390.844
5. MCLA 390.921a
6. MCLA 125.1401, Sec. 1(8)
7. MCLA 691.1402, -1404
8. MCLA 554.139
9. MCLA 554.633

691.1405

Note 12

the Board of Regents of the University of Michigan to tort liability, and therefore an action could be maintained against the board for personal injuries sustained by pedestrian struck by a truck owned by the university and driven by an employee of the university. *Branum v. State* (1966) 145 N.W.2d 860, 5 Mich.App. 134.

13. Waiver of claims

An agreement by a parent to waive any claim of negligence on the part of the school district and or its employee school bus driver would not be binding upon the injured child and is void in contravention of public policy. *Op.Atty.Gen.* 1980, No. 5825, p. 1105.

14. Notice

Notice within 60 days from time of injury is required where injury is sustained by reason of defects in highways or public buildings, but notice need not be given where injuries are caused by a motor vehicle owned by a governmental authority. *Republic Franklin Ins. Co. v. City of Walker* (1969) 169 N.W.2d 175, 17 Mich.App. 92.

15. Defenses

Under § 691.151 (repealed; see, now, §§ 691.1405 and 691.1409) which provided that in any civil action brought against a political

JUDICIARY

subdivision to recover damages resulting from negligent operation by any officer, agent or employee of such subdivision of the motor vehicle of which said political subdivision is owner "as such term is defined by act No. 302 of the Public Acts of 1915, as amended," (see, now, section 257.37), fact that such political subdivision was in ownership of such vehicle engaged in governmental function was not defense to such action, the reference clause in the act referred to the word owner rather than to motor vehicle. *Haveman v. Board of County Road Com'rs for Kent County* (1959) 96 N.W.2d 153, 356 Mich. 11.

Section 691.151 (repealed; see, now, §§ 691.1405 and 691.1409) which provided that in any civil action brought against a political subdivision for damages resulting from negligent operation by employee of subdivision of a motor vehicle owned by subdivision the fact that subdivision was engaged in a governmental function should not be a defense, was aimed at abolishing defense of governmental function in certain actions and authorizing insurance premium payments to protect political subdivision of state and municipal corporations against liability. *Haveman v. Board of County Road Com'rs for Kent County* (1959) 96 N.W.2d 153, 356 Mich. 11.

691.1406. Public buildings

Sec. 6. Governmental agencies have the obligation to repair and maintain public buildings under their control when open for use by members of the public. Governmental agencies are liable for bodily injury and property damage resulting from a dangerous or defective condition of a public building if the governmental agency had actual or constructive knowledge of the defect and, for a reasonable time after acquiring knowledge, failed to remedy the condition or to take action reasonably necessary to protect the public against the condition. Knowledge of the dangerous and defective condition of the public building and time to repair the same shall be conclusively presumed when such defect existed so as to be readily apparent to an ordinary observant person for a period of 90 days or longer before the injury took place. As a condition to any recovery for injuries sustained by reason of any dangerous or defective public building, the injured person, within 120 days from the time the injury occurred, shall serve a notice on the responsible governmental agency of the occurrence of the injury and the defect. The notice shall specify the exact location and nature of the defect, the injury sustained and the names of the witnesses known at the time by the claimant.

The notice may be served upon any individual, either personally, or by certified mail, return receipt requested, who may lawfully be served with civil process directed against the responsible governmental agency, anything to the contrary in the charter of any municipal corporation notwithstanding. If required by the legislative body or chief administrative officer of the responsible

governmental agency, the claimant shall appear to testify, when physically able to do so, and shall produce his witnesses before the legislative body, a committee thereof, the chief administrative officer, his deputy, or a legal officer of the governmental agency, as directed by the legislative body or by the chief administrative officer of the responsible governmental agency, for examination under oath as to the claim, the amount thereof, and the extent of the injury. Notice to the state of Michigan shall be given as provided in section 4.¹ No action shall be brought under the provisions of this section against any governmental agency, other than a municipal corporation, except for injury or loss suffered after July 1, 1965.

¹ Section 691.1404.

Historical and Statutory Notes

Source:

P.A.1964, No. 170, § 6, Eff. July 1, 1965.
C.L.1948, § 691.1406.
P.A.1970, No. 155, § 1, Imd. Eff. Aug. 1.
C.L.1970, § 691.1406.

The 1970 amendment substituted "120 days" for "60 days", and deleted "verified" preceding "notice" in the next to the last sentence of the first paragraph.

Cross References

County buildings, duty to keep in good repair, see § 45.16.
Procedure in court of claims, see § 600.6401 et seq.
State building authority, creation and duties, see § 830.411 et seq.

American Law Reports

Incapacity caused by accident in suit as affecting notice of claim required as condition of holding local governmental unit liable for personal injury, 44 ALR3d 1108.
Plaintiff's right to bring tort action against municipality prior to expiration of statutory waiting period, 73 ALR3d 1019.
Insufficiency of notice of claim against municipality as regards statement of place where accident occurred, 69 ALR4th 484.
Liability of local government entity for injury resulting from use of outdoor playground equipment at municipally owned park or recreation area, 73 ALR4th 496.
Right of one governmental subdivision to sue another such subdivision for damages. 11 ALR5th 630.

Law Review and Journal Commentaries

Civil Procedure. Edward H. Cooper, 13 Wayne L.Rev. 71 (1966).

Government law: Annual survey of Michigan law 1982. Susan Peck Iannotti and Daniel V. Iannotti, 29 Wayne L.Rev. 749 (1983); Annual survey of Michigan Law of 1998. Stephen T. Menovcik, 45 Wayne L.Rev. 1059 (1999).

Governmental immunity after Parker and Perry: King can do some wrong. Edward J. Littlejohn and Gregory J. DeMars, Det.C.L.Rev. 1 (1982).

Governmental immunity and the public schools: What is the standard? 1 Cooley L.Rev. 159 (1982).

Governmental immunity for the child care social worker: Has Michigan gone too far for too little? 5 Cooley L.Rev. 763 (1988).

Governmental immunity from tort liability in Michigan: Analysis of doctrine and related statutory and judicial exceptions. 28 Wayne L.Rev. 1761 (1982).

Governmental immunity of school districts and their employee. Nazar Berry and Blair Hysni, 60 Mich.B.J. 80 (1981).

Governmental liability and immunity: Annual survey of Michigan law 1972. Marcus L. Plant, 19 Wayne L.Rev. 713 (1973).

Governmental tort liability. Luke K. Cooper-rider, 72 Mich.L.Rev. 187 (1973).

Liability for defective public buildings. John A. Braden, 72 Mich.B.J. 1144 (1993).

Local government: Annual survey of Michigan law 1974. Jerold Lax, 21 Wayne L.Rev. 577 (1975); Annual survey of Michigan law

implementing, clarifying, and confirming in the board the constitutional powers customarily exercised by the board of control of an institution of higher education established by law having authority to grant baccalaureate degrees. Enumeration of powers in this act shall not be considered to exclude powers not expressly excluded by law.

Historical and Statutory Notes

Source:

P.A.1970, No. 35, § 4, Eff. July 1, 1970.
C.L.1948, § 390.154.

C.L.1970, § 390.154.

P.A.1977, No. 249, § 1, Imd. Eff. Dec. 6, 1977.

Cross References

Administrative procedures act, see § 24.201 et seq.
Tuition, North American Indians, see § 390.1251 et seq.

Library References

Colleges and Universities ¶7.
WESTLAW Topic No. 81.
C.J.S. Colleges and Universities §§ 15 to 18.

390.155. Transfer of assets and facilities to Oakland university

Sec. 5. The present assets and facilities of the Oakland branch of Michigan state university constitute the properties of Oakland university and upon the effective date of this act, transfer of the properties shall be made to Oakland university.

Historical and Statutory Notes

Source:

P.A.1970, No. 35, § 5, Eff. July 1, 1970.

C.L.1948, § 390.155.

C.L.1970, § 390.155.

390.156. Board of control; borrowing power; acquisition of property

Sec. 6. The board shall not borrow money on its general faith and credit, nor create any liens upon its property except as herein provided. The board may acquire land or acquire or erect buildings or alter, equip or maintain them, to be used as residence halls, apartments, dining facilities, student centers, health centers, parking structures, stadiums, athletic fields, gymnasiums, auditoriums and other educational facilities. After the legislature by concurrent resolution has approved the acquisition or construction of such facilities, the board may borrow money issuing notes or bonds under such terms and provisions as it deems best to finance or refinance such facilities, the necessary site or sites therefor, and including, but not limited to, capitalized interest and a debt service reserve in connection with such notes or bonds, and shall obligate itself for the repayment thereof, together with interest thereon, solely out of (a) income and revenues from such facilities, or other such facilities heretofore or hereafter acquired, (b) special fees and charges required to be paid by the students deemed by it to be benefited thereby, (c) funds to be received as gifts, grants or otherwise from the state or federal government or any agency thereof or any public or private donor, if, prior to issuance of such

390.156**UNIVERSITIES AND COLLEGES**

notes or bonds, the state, federal government or agency thereof or other donor has contracted to pay to the board or to the holder of such notes or bonds definite amounts of money as determined by formula or otherwise, (d) the proceeds of or delivery of any notes or bonds issued hereunder, and (e) any combination of (a), (b), (c), and (d).

Historical and Statutory Notes**Source:**

P.A.1970, No. 35, § 6, Eff. July 1, 1970.

C.L.1948, § 390.156.

C.L.1970, § 390.156.

390.157. Bonds, notes, or other obligations; purchase by state prohibited

Sec. 7. Bonds, notes or other obligations issued under the provisions of this act shall not be purchased by the state of Michigan.

Historical and Statutory Notes**Source:**

P.A.1970, No. 35, § 7, Eff. July 1, 1970.

C.L.1948, § 390.157.

C.L.1970, § 390.157.

390.158. Board of control; ordinances, adoption, amendment or repeal; violation, penalty

Sec. 8. The board may adopt, amend and repeal such ordinances, not inconsistent with this act, as it may deem necessary and in the interest of the health, safety, and welfare of persons using the property and facilities of Oakland university. Such ordinances shall be adopted by affirmative vote of the majority of the board, to be effective upon the date of publication of the ordinance. The violation of any such ordinance shall be a misdemeanor punishable by a fine of not more than \$100.00 or imprisonment for not more than 90 days or both.

Historical and Statutory Notes**Source:**

P.A.1970, No. 35, § 8, Eff. July 1, 1970.

C.L.1948, § 390.158.

C.L.1970, § 390.158.

Cross References

Misdemeanor, see §§ 750.8, 750.9.

390.159. Effective date of act

Sec. 9. This act shall become effective July 1, 1970.

Historical and Statutory Notes**Source:**

P.A.1970, No. 35, § 9, Eff. July 1, 1970.

C.L.1948, § 390.159.

C.L.1970, § 390.159.

Notes of Decisions

Insurance 2
Open meetings 1

1. Open meetings

Governing board of an educational institution of higher learning must, when convened in accordance with established rules of such body for transaction of business, convene in public session to which members of public are to be admitted; private or executive meetings which are not held in accordance with established rules, or at which no business of board is trans-

acted, are not "formal sessions" within provision of Const.Art. 8, § 4, requiring such sessions to be open to the public; private or executive meetings are to be discouraged. Op.Atty.Gen. 1969, No. 4676, p. 73.

2. Insurance

Boards of control of state supported colleges and universities may pay from funds available for compensation of employees premiums for group life and health insurance policies. Op. Atty.Gen.1961-62, No. 3541, p. 104.

390.804. Cost of name change; student fees; report

Sec. 4. (1) The state shall not bear any cost incurred in the transition of Ferris state college to Ferris state university. Costs incurred by the name change shall be borne by the institution from nonstate sources.

(2) A student shall not bear any cost incurred in the transition of Ferris state college to Ferris state university by an increase in either tuition or other student fees. All costs associated with the transition of Ferris state college to Ferris state university and the source from which funds required to effectuate the transition were received shall be reported to the house and senate appropriations committees no later than December 31, 1989.

P.A.1949, No. 114, § 4, added by P.A.1987, No. 157, § 1, Imd. Eff. Nov. 5, 1987.

Historical and Statutory Notes

For contingent effect provisions of P.A.1987, No. 157, see the Historical and Statutory Notes following § 390.801.

FERRIS STATE UNIVERSITY

Caption editorially modified

Cross References

Name "Ferris institute" changed to "Ferris state university", see § 390.861.

P.A.1953, No. 55, Imd. Eff. May 8, 1953

AN ACT to authorize the board of control of Ferris state university to borrow money for the purpose of financing the erection and operation of residence halls, housing units, social centers, health residences and facilities, and structures designed for the fostering of athletics, dramatics, music and other similar activities at the university. Amended by P.A.1959, No. 214, § 1, Imd. Eff. July 30, 1959; P.A.1987, No. 160, § 1, Imd. Eff. Nov. 5, 1987.

The People of the State of Michigan enact:

390.821. Ferris state university; board of control; powers

Sec. 1. The board of control of Ferris state university may do all of the following:

- (a) Acquire, purchase, or erect residence halls and housing units.
- (b) Acquire, purchase, or erect buildings, rooms, and facilities to be used as social centers for the students and faculty members, separate from or combined with residence halls.
- (c) Acquire, purchase, or erect health residences and facilities and furnish, equip, and operate them.
- (d) Acquire, purchase, or erect structures designed for fostering of athletics, dramatics, music, and other similar activities and furnish, equip, and operate them.
- (e) Rent rooms and facilities in residence halls and housing units and provide board to the students, faculty members, guests, and employees at rates that will insure a reasonable excess of income over operation expense.
- (f) Collect from each student a reasonable fee for the use of or maintenance of social centers provided for them under this act.
- (g) Collect from each student a reasonable fee as a part of the student's tuition fee for the services, treatment, and benefits to which the student is entitled from the health service maintained by the institution.
- (h) Collect from each student a reasonable fee for the use of or maintenance of structures designed for the fostering of athletics, dramatics, music, and similar activities provided for students under this act.
- (i) Hold the funds derived from the operation of residence halls and housing units, fees collected for the use of or maintenance of social centers, health residences and facilities, or fees collected for the use of and maintenance of structures designed to foster athletics, dramatics, music, and other similar activities, and spend the funds for repairs, replacements, and betterments, including the payment of indebtedness resulting from the erection or purchase of residence halls and housing units or buildings, rooms and facilities to be used as social centers, for health residences and facilities, or structures designed to foster athletics, dramatics, music, and other similar activities.
- (j) Exercise full control and complete management of residence halls, housing units and social centers, health residences and facilities, and structures designed for the fostering of athletics, dramatics, music, and other similar activities.

Amended by P.A.1987, No. 160, § 1, Imd. Eff. Nov. 5, 1987.

Historical and Statutory Notes

Source:

P.A.1953, No. 55, § 1, Imd. Eff. May 8, 1953.
 C.L.1948, § 390.821.
 P.A.1959, No. 214, § 1, Imd. Eff. July 30, 1959.
 C.L.1970, § 390.821.

The 1987 amendment, in the introductory paragraph, substituted "state university may do all of the following" for "institute is authorized to"; in subd. (a), deleted "as may be required

for the good of the institution" following "housing units"; in subd. (b), deleted ", when in its judgment the same may be required for the good of the institution" following "residence halls"; in subd. (c), deleted "as may be required for the good of the institution" following "facilities"; in subd. (d), deleted "as may be required for the good of the institution" following "activities"; in subd. (f), deleted "the provisions of" preceding "this act"; in subd. (h), deleted "the provisions of" preceding "this act"; and, in

Library References

Colleges and Universities 6-7.
 WESTLAW Topic No. 81.
 C.J.S. Colleges and Universities §§ 15 to 18.

Notes of Decisions

Insurance 2
 Open meetings 1
 Rules 3

ecutive meetings are to be discouraged. Op.
 Atty.Gen.1969, No. 4676, p. 73.

2. Insurance

Boards of control of state supported colleges and universities may pay from funds available for compensation of employees premiums for group life and health insurance policies. Op. Atty.Gen.1961-62, No. 3541, p. 194.

3. Rules

State college officials had inherent power to promulgate and enforce regulations, but such authority had to be exercised consistently with fundamental constitutional safeguards. Smyth v. Lubbers, W.D.Mich.1975, 398 F.Supp. 777.

1. Open meetings

Governing board of an educational institution of higher learning must, when convened in accordance with established rules of such body for transaction of business, convene in public session to which members of public are to be admitted; private or executive meetings which are not held in accordance with established rules, or at which no business of board is transacted, are not "formal sessions" within provision of Const. Art. 8, § 4, requiring such sessions to be open to the public; private or ex-

390.844. Borrowing power; acquisition of property

Sec. 4. The board shall not borrow money on its general faith and credit, nor create any liens upon its property except as provided. The board may acquire land or acquire or erect buildings, or alter, equip, or maintain them, to be used as residence halls, apartments, dining facilities, student centers, health centers, parking structures, stadiums, athletic fields, gymnasiums, auditoriums, and other educational facilities. After the legislature by concurrent resolution has approved the acquisition or construction of such facilities, the board may borrow money issuing notes or bonds under such terms and provisions as it deems best to finance such facilities, the necessary site or sites, and including, but not limited to, capitalized interest and a debt service reserve in connection with the notes or bonds, with interest, solely out of income and revenues from any such facilities or any other such facilities later acquired, special fees and charges required to be paid by the students considered by the board to be benefited, funds to be received as gifts, grants, or otherwise from the state or federal government or any agency of the state or federal government or any public or private donor, if, prior to issuance of such notes or bonds, the state, federal government, or its agency, or other donor has contracted to pay to the board or to the holder of such notes or bonds definite amounts of money as determined by formula or otherwise, the proceeds of or delivery of any notes or bonds issued, or any combination thereof.

Amended by P.A.1987, No. 156, § 1, Imd. Eff. Nov. 5, 1897.

Historical and Statutory Notes

Source:

P.A.1960, No. 120, § 4, Eff. Aug. 17, 1960.
 C.L.1948, § 390.844.

P.A.1966, No. 149, § 1, Imd. Eff. June 24, 1966.

390.914

Note 1

for Public Community and Junior Colleges. Op.
Atty.Gen. 1996, No. 6897.

UNIVERSITIES AND COLLEGES

390.915. General supervision and planning, appropriations

Sec. 5. The state board for public community and junior colleges, at least once each year, shall advise the state board of education concerning general supervision and planning for such colleges and requests for annual appropriations for their support.

Historical and Statutory Notes

Source: C.L.1948, § 390.915.
P.A.1964, No. 193, § 5, Eff. Jan. 1, 1965. C.L.1970, § 390.915.

Cross References

State board of education, transfer intact to department of education, see §§ 16.103, 16.402.

390.916. Effective date

Sec. 6. This act shall take effect on January 1, 1965.

Historical and Statutory Notes

Source: C.L.1970, § 390.916.
P.A.1964, No. 193, § 6, Eff. Jan. 1, 1965. P.A.1964, No. 193, was ordered to take immediate effect, and was approved May 20, 1964.
C.L.1948, § 390.916.

HIGHER EDUCATION FACILITIES AUTHORITY ACT

Cross References

Higher education facilities commission, see § 390.941 et seq.

P.A.1969, No. 295, Imd. Eff. Aug. 11, 1969

AN ACT to establish the Michigan higher education facilities authority; to prescribe its powers and duties; to authorize the authority to borrow money and issue bonds for educational facilities; to exempt the bonds from taxation; and to authorize the authority to lend money to nonprofit educational institutions in this state to finance or refinance capital improvements. Amended by P.A.1973, No. 50, § 1, Imd. Eff. July 11, 1975; P.A.1975, No. 305, § 1, Imd. Eff. Dec. 22, 1973; P.A.1982, No. 409, § 1, Imd. Eff. Dec. 28, 1982.

390.921. Short title

Sec. 1. This act shall be known and may be cited as the "higher education facilities authority act".

Historical and Statutory Notes

Source: C.L.1948, § 390.921.
P.A.1969, No. 295, § 1, Imd. Eff. Aug. 11, 1969. C.L.1970, § 390.921.

HIGHER EDUCATION FACILITIES AUTHORITY

390.922

Law Review and Journal Commentaries

Analysis of traditional and multicounty authorities. 71 Mich.L.Rev. 1376 (1973).

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

390.921a. Necessity for financing; public purpose

Sec. 1a. It is hereby determined that there exists in this state a need for the financing of educational facilities at private or nonpublic, nonprofit institutions of higher learning so as to maintain and further the educational capabilities of these institutions. It is further determined that it is a valid public purpose to lend money to or participate in the lending of money to these educational institutions for the acquisition or alteration of, or energy efficiency improvements to, educational facilities within this state. It is further determined that the authority and powers conferred by this act constitute a necessary program and serve a valid public purpose.

Amended by P.A.1982, No. 409, § 1, Imd. Eff. Dec. 28, 1982.

Historical and Statutory Notes

Source:

P.A.1969, No. 295, § 1a, added by P.A.1975, No. 305, § 1, Imd. Eff. Dec. 22, 1975.
C.L.1970, § 390.921a.

The 1982 amendment, in the second sentence inserted ", or energy efficiency improvements

to.", and deleted "who otherwise would be unable to obtain financing for these facilities at a feasible or reasonable rate of interest" following "this state".

Library References

Colleges and Universities ¶4.
WESTLAW Topic No. 81.
C.J.S. Colleges and Universities § 7.

390.922. Definitions

Sec. 2. As used in this act:

(a) "Authority" means the Michigan higher education facilities authority created by this act.

(b) "Institution for higher learning" or "institution" means a private or nonpublic, nonprofit educational institution within the state authorized by law to provide a program of education beyond the high school level.

(c) "Educational facility" means a structure available for use as a dormitory or other housing facility, including housing facilities for students, a dining hall, student union, administration building, academic building, library, laboratory, research facility, classroom, athletic facility, health care facility, and maintenance, storage, or utility facility, and other structures or facilities related thereto or required or useful for the instruction of students or the conducting of research or the operation of an institution for higher education, including parking and other facilities or structures essential or convenient for the orderly conduct of the institution for higher education, and shall include lands and

- Section**
 125.2726. Homestead agreements to acquire public housing property, eligibility; substance abuse testing for applicants.
 125.2727. Qualified buyers; acquiring public housing units; lease agreements.
 125.2728. Mortgage loans.
 125.2729. Right of first refusal by resident organization or successor entity.
 125.2730. Residents who reside in housing project prior to sale, rights.
 125.2731. Obtaining appropriate waivers.
 125.2732. Powers of local governmental unit.
 125.2733. Independent auditors; audits available to public.
 125.2734. Late or delinquent rents.

URBAN HOMESTEADING ON VACANT LAND ACT

P.A.1999, No. 129

- 125.2741. Short title.
 125.2742. Definitions.
 125.2743. Urban homesteading programs for vacant land.
 125.2744. Criteria for purchasers.
 125.2745. Purchase of property.
 125.2746. Offering of vacant property for sale.
 125.2747. Powers additional to other powers granted.
 125.2748. Audits.

URBAN HOMESTEADING IN SINGLE-FAMILY PUBLIC HOUSING ACT

P.A.1999, No. 128

- 125.2761. Short title.
 125.2762. Definitions.
 125.2763. Homesteading programs for single-family public housing.
 125.2764. Criteria for qualified buyers.
 125.2765. Applications; homestead agreements; purchase of property.
 125.2766. Loans by Michigan state housing development authority.
 125.2767. Waiver of federal law, rule, or policy.

STATE HOUSING DEVELOPMENT AUTHORITY ACT OF 1966

Cross References

Contracts for issuance of savings accounts to federal, state, political subdivisions, governmental units or agencies; school districts; see § 491.606.

PURPOSE AND POLICY

125.1401. Purpose

Section (1) The legislature hereby determines that there exists in the state a seriously inadequate supply of, and a pressing need for, safe and sanitary dwelling accommodations within the financial means of low income or moderate income families or persons, including

Changes in text indicated by underline; asterisks * * * indicate deletion

- Section**
 125.2768. Powers additional to other powers granted.
 125.2769. Audits.
 125.2770. Past due rent.

OBSOLETE PROPERTY REHABILITATION ACT

P.A.2000, No. 146

- 125.2781. Short title.
 125.2782. Definitions.
 125.2783. Obsolete property rehabilitation districts; establishment by qualified local governmental units.
 125.2784. Obsolete property rehabilitation exemption certificates, applications.
 125.2785. Obsolete property rehabilitation exemption certificates; approval or disapproval by resolution.
 125.2786. Resolutions; approval or disapproval by commission.
 125.2787. Exemptions from ad valorem property taxes; rehabilitated facilities.
 125.2788. Taxable value of proposed exempt property; requirements of obsolete property exemption certificates.
 125.2789. Annual valuation of rehabilitated facilities.
 125.2790. Obsolete properties tax; amount.
 125.2791. Liens upon real property.
 125.2792. Revocation of obsolete property rehabilitation exemption certificate.
 125.2793. Transfer and assignment of an obsolete property rehabilitation exemption certificate.
 125.2794. Annual reports to commission; status of exemptions.
 125.2795. Annual reports to legislature; utilization of obsolete property rehabilitation districts.
 125.2796. New exemptions granted after December 31, 2010.
 125.2797. Mills levied for school operation purposes, exclusions.

those families and persons displaced by the clearing of slums and blighted areas or by other public programs; that there exists in this state a high incidence of residential real property occupied by persons of low and moderate income which is not safe, sanitary, or adequate and that there is a pressing need for rehabilitation of that property; that large areas in municipalities have become blighted or, through programs to remove blight, have become vacant, resulting in the impairment or loss of taxable values upon which municipal revenue largely depends; that large numbers of middle and upper income persons and families have left municipalities which have high concentrations of low income persons and families resulting in a high demand for municipal services notwithstanding a low potential for generating revenues necessary to pay for those services; that the existence of blight, the inability to redevelop cleared areas, and the lack of economic integration is detrimental to the general welfare of the citizens of this state and the economic welfare of municipalities in this state; that the financing of housing for persons and families without regard to income will assist in preserving existing values of property within or adjacent to blighted or cleared areas; that economic integration will promote the financial and social stability of housing for families and persons of low and moderate income; that in order to improve and maintain the general character of municipalities having the aforesaid characteristics, it is necessary to promote the development of housing for persons and families without regard to income; that to increase the availability of safe and sanitary housing generally it is necessary to facilitate the purchase of existing housing by making financing for the purchase of existing housing available at affordable interest rates; that there are inadequate social, recreational, commercial, and communal facilities in residential areas inhabited by low income or moderate income families or persons and in areas blighted or vacant because of slum clearance, and that housing financed pursuant to this act will not be viable without adequate social, recreational, commercial, and communal facilities in the surrounding area; and that it is a valid public purpose to finance the acquisition and rehabilitation of existing housing or the construction of additional housing for those low or moderate income families and persons who would otherwise be unable to obtain adequate and affordable dwellings, to finance the rehabilitation of residential real property occupied or to be occupied by persons and families of low and moderate income who would otherwise be unable to afford the purchase or rehabilitation of residential real property which is safe, sanitary, or adequate; to finance housing for persons and families without regard to income in areas in municipalities which are experiencing blight or inability to redevelop land cleared of blight which are predominately populated by low and moderate income persons and families; to finance social, recreational, commercial, and communal facilities to serve those families or persons, to enhance authority-financed housing, to establish and provide acceleration and foreclosure procedures for authority-financed housing, and to acquire land for present or future development including that housing and social, recreational, commercial, and communal facilities; that it is a valid public purpose to finance safe, sanitary, and adequate mobile homes, mobile home parks, and mobile home condominium projects for persons and families of low and moderate income in order to facilitate the provision of affordable housing for such persons, to finance mobile homes, mobile home parks, and mobile home condominium projects without regard to income in areas in municipalities which are experiencing blight or inability to redevelop land cleared of blight which are predominately populated by low and moderate income persons and families, and to finance social, recreational, commercial, and communal facilities in mobile home parks and mobile home condominium projects, the financing of mobile homes, mobile home parks, and mobile home condominium projects being necessary to fill a gap in the housing market.

(2) It is further determined that the supply of low and moderate cost housing available for occupancy by certain * * * persons with disabilities and certain elderly persons is being eroded through greatly increasing rental rates, and the conversion of low and moderate cost rental units into condominium units which are then sold at prices and under financing terms which are not affordable to those * * * persons with disabilities and elderly persons. It is further determined that it is a proper public purpose to prevent the erosion of the supply of existing low and moderate cost housing available for occupancy by certain * * * persons with disabilities and elderly persons by taking appropriate action to prevent the displacement of those * * * persons with disabilities and elderly persons from existing low and moderate cost

Changes in text indicated by underline; asterisks * * * indicate deletion

housing, including the making of loans enabling those * * * persons with disabilities and elderly persons to continue to rent the units in which they reside.

(3) It is further determined that to assure an adequate supply of safe and sanitary housing for families of low and moderate income within the financial means of those families, it is necessary to facilitate the purchase of safe and sanitary existing housing by those families; that, in addition, new single-family housing construction is inhibited by the inability of prospective purchasers to sell existing single-family residences, and that those conditions result in the reduction of the number of safe and sanitary dwellings which would otherwise be made available to persons of low and moderate income; and that the depressed economy and decreased employment in this state are detrimental to the general welfare of the citizens of this state. It is further determined that it is necessary in order to alleviate those conditions and is a valid public purpose to provide for the financing, with the assistance of the authority, of the purchase of existing single-family residences for occupancy by low and moderate income families and families without regard to income in areas in municipalities which are experiencing blight or inability to redevelop land cleared of blight and which are predominately populated by low and moderate income persons and families.

(4) It is further determined that there exists in this state a high incidence of residential rental property which is not safe, sanitary, adequate, or energy efficient, and that there is a pressing need for the rehabilitation of residential rental property in order to preserve and improve the state's existing housing stock. It is further determined that it is necessary in order to alleviate those conditions and is a valid public purpose to provide for the financing, with the assistance of the authority, of the rehabilitation of existing residential rental property without regard to the income of the persons or entities owning the property or of the tenants of the property.

(5) It is further determined that there is a statewide pressing need for programs to alleviate and prevent conditions of unemployment in the housing industry, to preserve existing jobs and create new jobs to meet the employment demands of population growth, to promote the development of construction-related business enterprises, to revitalize and diversify the Michigan economy in general, and to achieve the goals of economic growth and full employment.

(6) It is further determined that the construction and rehabilitation of safe and sanitary dwellings are necessary to the creation and retention of jobs in the state.

(7) It is further determined that the retention, promotion, and development of the housing industry require additional means of financing to help existing business enterprises expand more rapidly, to promote the location of additional business enterprises in this state, and to alleviate and prevent conditions of unemployment.

(8) The legislature finds that the conditions described in subsections (1) to (7) cannot be remedied by the ordinary operation of private enterprise without supplementary public participation and that the authority and powers conferred by this act constitute a necessary program and serve a valid public purpose.

Amended by P.A. 1998, No. 33, Imd. Eff. March 18, 1998.

Historical and Statutory Notes

1998 Legislation: P.A. 1998, No. 33, substituted "persons with disabilities" for "handicapped persons" throughout the section; and in subsec. (1), substituted "predominately" for "predominantly" where first appearing.

GOVERNMENTAL LIABILITY

691.1402

incorporation described its purpose as public hospital for city and it maintained substantial connections with city through appointments to board of trustees; hospital was incorporated by individuals, rather than political subdivision, maintained separate, nongovernmental corporate identity, and was financially independent. *O'Neill v. Emma L. Bixby Hosp.* (1990) 451 N.W.2d 594, 182 Mich.App. 252, appeal denied.

In spite of its independence, the Board of Regents of the University of Michigan remains a part of the government of the state of Michigan. *Branum v. State* (1966) 145 N.W.2d 860, 5 Mich.App. 134.

5. Political subdivision

Department of Corrections' operation of dairy farm to produce dairy products and meat through inmate labor, exclusively for distribution within the corrections system, was impliedly authorized by statute and, thus, was a "governmental function," for purposes of governmental immunity statute and inmate's negligence action against Department for injuries sustained while operating a cream-separating machine as part of his prison work assignment. *Russell v. Department of Corrections* (1999) 592 N.W.2d 125, 234 Mich.App. 135, leave to appeal denied 602 N.W.2d 582.

Township utilities authority was formed pursuant to statute allowing townships to establish sewage-disposal, water-supply and solid-waste management system authorities and, thus, utilities authority was political subdivision, and possibly municipal corporation, entitled to governmental immunity from tort liability concerning discharge of governmental functions. *Baker v. Waste Management of Michigan, Inc.* (1995) 528 N.W.2d 835, 208 Mich.App. 602.

A lake board established under § 281.903 is a political subdivision covered by the governmental immunity act, §§ 691.1401, 691.1407. *Op. Atty.Gen.* 1989, No. 6579, p. 91.

6. Governmental function

City water and sewerage department engaged in "governmental function" whenever it provided water and sewage services, and was thus

entitled to governmental immunity from contractor's common law tort claims; State Constitution, Home Rule Cities Act, and city charter authorized such activity. *Elsag Bailey, Inc. v. City of Detroit, Mich.*, E.D.Mich.1997, 975 F.Supp. 981.

Under the governmental immunity act, governmental agencies are immune from tort liability when engaged in the exercise or discharge of a governmental function. *CS&P, Inc. v. City of Midland* (1998) 580 N.W.2d 468, 229 Mich.App. 141, appeal granted 603 N.W.2d 269, vacated 609 N.W.2d 174.

University medical professor was performing a "governmental function," for purposes of governmental tort immunity statute, when he treated patient, who suffered cardiac arrest and died after giving birth to her son, within medical school setting. *Vargo v. Sauer* (1998) 576 N.W.2d 656, 457 Mich. 49.

Public university's operation of athletic department and intercollegiate athletic programs was "governmental function" and thus shielded from liability under governmental immunity statute; athletic programs were educational, regardless of any incidental profit or revenue generated by such programs. *Harris v. University of Michigan Bd. of Regents* (1996) 558 N.W.2d 225, 219 Mich.App. 679, appeal held in abeyance 568 N.W.2d 672, appeal dismissed 570 N.W.2d 786.

County's operation of metropolitan airport constituted "governmental function" within meaning of governmental immunity statute inasmuch as acquisition, operation, and maintenance of airports by political subdivisions was expressly authorized by legislature. *Codd v. Wayne County* (1995) 537 N.W.2d 453, 210 Mich.App. 133.

"Governmental function" is activity that is expressly or impliedly mandated or authorized by Constitution, statute, or other law, and tort liability may be imposed against government agency only if agency was engaged in ultra vires activity. *Adam v. Sylvan Glynn Golf Course* (1992) 494 N.W.2d 791, 197 Mich.App. 95.

691.1402. Defective highways; state trunkline highways; liability for injuries; limitations; contractual rights

Sec. 2. (1) Except as otherwise provided in section 2a, each governmental agency having jurisdiction over a highway shall maintain the highway in reasonable repair so that it is reasonably safe and convenient for public travel. A person who sustains bodily injury or damage to his or her property by reason of failure of a governmental agency to keep a highway under its jurisdiction in reasonable repair and in a condition reasonably safe and fit for travel may recover the damages suffered by him or her from the governmental agency.

The liability, procedure, and remedy as to county roads under the jurisdiction of a county road commission shall be as provided in section 21 of chapter IV of 1909 PA 283, MCL 224.21. The duty of the state and the county road commissions to repair and maintain highways, and the liability for that duty extends only to the improved portion of the highway designed for vehicular travel and does not include sidewalks, trailways, crosswalks, or any other installation outside of the improved portion of the highway designed for vehicular travel. A judgment against the state based on a claim arising under this section from acts or omissions of the state transportation department is payable only from restricted funds appropriated to the state transportation department or funds provided by its insurer.

(2) If the state transportation department contracts with another governmental agency to perform work on a state trunk line highway, an action brought under this section for tort liability arising out of the performance of that work shall be brought only against the state transportation department under the same circumstances and to the same extent as if the work had been performed by employees of the state transportation department. The state transportation department has the same defenses to the action as it would have had if the work had been performed by its own employees. If an action described in this subsection could have been maintained against the state transportation department, it shall not be maintained against the governmental agency that performed the work for the state transportation department. The governmental agency also has the same defenses that could have been asserted by the state transportation department had the action been brought against the state transportation department.

(3) The contractual undertaking of a governmental agency to maintain a state trunk line highway confers contractual rights only on the state transportation department and does not confer third party beneficiary or other contractual rights in any other person to recover damages to person or property from that governmental agency. This subsection does not relieve the state transportation department of liability it may have, under this section, regarding that highway.

(4) The duty imposed by this section on a governmental agency is limited by sections 81131 and 82124 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.81131 and 324.82124.

Amended by P.A.1990, No. 278, § 1, Imd. Eff. Dec. 11, 1990; P.A.1996, No. 150, § 1, Imd. Eff. March 25, 1996; P.A.1999, No. 205, Imd. Eff. Dec. 21, 1999.

Historical and Statutory Notes

Source:

P.A.1964, No. 170, § 2, Eff. July 1, 1965.

C.L.1948, § 691.1402.

C.L.1970, § 691.1402.

The 1990 amendment inserted the subsection numbering; in subsec. (1), inserted "or her" throughout, in the third sentence substituted "of chapter IV" for "chapter 4", inserted "Michigan", and deleted "of 1948" following "Compiled Laws", and, in the sixth sentence substituted

"transportation" for "highway" twice; and added subsecs. (2) and (3).

The 1996 amendment, in subsec. (1), in the first and second sentences substituted "a highway" for "any highway", in the second sentence substituted "A person" for "Any person" and "a governmental" for "any governmental", in the fourth sentence substituted "for that duty, extends" for "therefor, shall extend" and "does" for "shall", deleted the former fifth sentence,

GOVERNMENTAL LIABILITY

691.1402a

employee, where insurer, in settling underlying lawsuit, obtained release which extinguished liability of its insured but which failed to extinguish liability of commission. *Buckeye Union Ins. Co. v. Lenawee County Road Com'n*, E.D.Mich.1982, 540 F.Supp. 634.

Contribution statute [§ 600.2925 (repealed; see, now, §§ 600.2925a to 600.2925d)] created a substantive cause of action for contribution available to defendants-third-party plaintiffs against county road commissions for negligently maintaining intersection, which was scene of automobile collision, which cause of action was wholly independent of the underlying tort action, unaffected by governmental immunity statute (§ 691.1401 et seq.) and which could be prosecuted to judgment, provided that the other requirements of the contribution statute were met. *Sziber v. Stout* (1984) 358 N.W.2d 330, 419 Mich. 514.

Claim for contribution from state is not within highway exception to governmental immunity. *Lenawee County Road Com'n v. Michigan Dept. of Transp.* (1983) 340 N.W.2d 316, 128 Mich.App. 528.

This section did not preclude defendant manufacturer of payload which rolled over and fatally injured plaintiff's decedent from filing a third-party claim for contribution against the county board of road commissioners as a joint tort-feasor for alleged negligence in failing to properly maintain the roadway. *May v. Wolverine Tractor and Equipment Co.* (1981) 309 N.W.2d 594, 107 Mich.App. 163, appeal dismissed 325 N.W.2d 1, 412 Mich. 863.

State Highway Commission had governmental immunity with respect to action brought by county road commission seeking contribution as a result of settlement in wrongful death action brought in circuit court against county road commission and State Highway Commission, since county road commission had suffered no bodily injury or damage to property by reason of a failure of State Highway Commission to keep highway in reasonable repair and since money judgment had not been recovered jointly against county road commission and State Highway Commission. *Genesee County Road Commission v. Michigan State Highway Commission* (1978) 272 N.W.2d 632, 86 Mich.App. 294.

Statutory scheme which permitted county road commission to be sued for contribution in circuit court, while shielding State Highway Department from such action did not violate county road commission's rights to equal protection of laws. *Genesee County Road Commis-*

sion v. Michigan State Highway Commission (1978) 272 N.W.2d 632, 86 Mich.App. 294.

77. Indemnity

Where plaintiff alleged that defendant manufacturer of payload which rolled over and fatally injured plaintiff's decedent was negligent, breached express and implied warranties, and acted in a fraudulent and deceptive manner, allegations which stemmed out of the design, manufacture and distribution of the payload, liability of defendant manufacturer was contingent on its active tortious conduct, and indemnification was not available to it through a third-party claim against county board of road commissioners for alleged negligence in failing to properly maintain roadway. *May v. Wolverine Tractor and Equipment Co.* (1981) 309 N.W.2d 594, 107 Mich.App. 163, appeal dismissed 325 N.W.2d 1, 412 Mich. 863.

Gas utility which sought indemnification or contribution failed to allege facts within exception to governmental immunity statute (this section) in connection with injuries sustained by resident, who was severely burned in fire resulting from break in underground gas line, even though the utility alleged that pipeline was damaged by Highway Department in process of widening and replacing street, where injured person was not alleged to have been using public highway for traveling purposes at time of accident, and the utility did not allege that the street was not in reasonable repair and not in condition reasonably safe and fit for travel. *Michigan Power Co. v. State* (1980) 296 N.W.2d 166, 97 Mich.App. 733.

78. Funds for payment of judgments

Monies in State Trunk Line Fund established in accordance with Const. Art. 9, § 9, may be used for payment of judgments awarded against State Department of Transportation pursuant to this section, for failure to maintain highways in reasonable repair and in reasonably safe condition. *Op.Atty.Gen.*1983, No. 6132, p. 59.

79. Review

In motorist's action against Department of Transportation seeking damages for injuries sustained in automobile accident on highway over which Department had jurisdiction, finding that other driver's negligence was proximate cause of motorist's damages was to be reviewed on remand, in light of fact that motorist might be able to establish that area in question should have been designated a no-passing zone. *Bocarossa v. Department of Transp.* (1991) 475 N.W.2d 390, 190 Mich.App. 313.

691.1402a. Duties to repair or maintain county highways; liabilities

Sec. 2a. (1) Except as otherwise provided by this section, a municipal corporation has no duty to repair or maintain, and is not liable for injuries

arising from, a portion of a county highway outside of the improved portion of the highway designed for vehicular travel, including a sidewalk, trailway, crosswalk, or other installation. This subsection does not prevent or limit a municipal corporation's liability if both of the following are true:

(a) At least 30 days before the occurrence of the relevant injury, death, or damage, the municipal corporation knew or, in the exercise of reasonable diligence, should have known of the existence of a defect in a sidewalk, trailway, crosswalk, or other installation outside of the improved portion of the highway designed for vehicular travel.

(b) The defect described in subdivision (a) is a proximate cause of the injury, death, or damage.

(2) A discontinuity defect of less than 2 inches creates a rebuttable inference that the municipal corporation maintained the sidewalk, trailway, crosswalk, or other installation outside of the improved portion of the highway designed for vehicular travel in reasonable repair.

(3) A municipal corporation's liability under subsection (1) is limited by section 81131 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.81131.

P.A.1964, No. 170, § 2a, added by P.A.1999, No. 205, Imd. Eff. Dec. 21, 1999.

Historical and Statutory Notes

P.A.1999, No. 205, enacting § 1, provides: 2a, as added by this amendatory act, apply only to a cause of action arising on or after the effective date of this amendatory act."

"Enacting section 1. Sections 1 and 2 of 1964 PA 170, MCL 691.1401 and 691.1402, as amended by this amendatory act, and section

Library References

Highways § 105.
WESTLAW Topic No. 200.
C.J.S. Highways § 179.

691.1403. Defective highways; knowledge of defect, repair, presumption

Sec. 3. No governmental agency is liable for injuries or damages caused by defective highways unless the governmental agency knew, or in the exercise of reasonable diligence should have known, of the existence of the defect and had a reasonable time to repair the defect before the injury took place. Knowledge of the defect and time to repair the same shall be conclusively presumed when the defect existed so as to be readily apparent to an ordinarily observant person for a period of 30 days or longer before the injury took place.

Historical and Statutory Notes

Source: C.L.1948, § 691.1403.
P.A.1964, No. 170, § 3, Eff. July 1, 1965. C.L.1970, § 691.1403.

American Law Reports

Amount of damages stated in notice of claim against municipality or county as limiting amount of recovery, 24 ALR3d 965.
Incapacity caused by accident in suit as affecting notice of claim required as condition of holding local governmental unit liable for personal injury, 44 ALR3d 1108.

691.1404. Notice of injury and highway defect

Sec. 4. (1) As a condition to any recovery for injuries sustained by reason of any defective highway, the injured person, within 120 days from the time the injury occurred, except as otherwise provided in subsection (3) shall serve notice on the governmental agency of the occurrence of the injury and the defect. The notice shall specify the exact location and nature of the defect, the injury sustained and the names of the witnesses known at the time by the claimant.

(2) The notice may be served upon any individual, either personally, or by certified mail, return receipt requested, who may lawfully be served with a process directed against the governmental agency, anything to the contrary in the charter of any municipal corporation notwithstanding. In case of the state, such notice shall be filed in triplicate with the clerk of the court of claims. Filing of such notice shall constitute compliance with section 6431 of Act No. 236 of the Public Acts of 1961, being section 600.6431 of the Compiled Laws of 1948, requiring the filing of notice of intention to file a claim against the state. If required by the legislative body or chief administrative officer of the responsible governmental agency, the claimant shall appear to testify, if he is physically able to do so, and shall produce his witnesses before the legislative body, committee thereof, or the chief administrative officer, or his deputy, or a legal officer of the governmental agency as directed by the legislative body or chief administrative officer of the responsible governmental agency, for examination under oath as to the claim, the amount thereof, and the extent of the injury.

(3) If the injured person is under the age of 18 years at the time the injury occurred, he shall serve the notice required by subsection (1) not more than 180 days from the time the injury occurred, which notice may be filed by parent, attorney, next friend or legally appointed guardian. If the injured person is physically or mentally incapable of giving notice, he shall serve the notice required by subsection (1) not more than 180 days after the termination of the disability. In all civil actions in which the physical or mental capability of the person is in dispute, that issue shall be determined by the trier of the facts. The provisions of this subsection shall apply to all charter provisions, statutes and ordinances which require written notices to counties or municipal corporations.

Historical and Statutory Notes**Source:**

P.A.1964, No. 170, § 4, Eff. July 1, 1965.

C.L.1948, § 691.1404.

P.A.1970, No. 155, § 1, Imd. Eff. Aug. 1.

C.L.1970, § 691.1404.

P.A.1972, No. 28, § 1, Imd. Eff. Feb. 19.

The 1970 amendment inserted the subsection numbering; substituted "120 days" for "60 days", inserted "except as otherwise provided in subsec. (3)", and deleted "verified" preceding "notice" in the first sentence of subsec. (1); and added subsec. (3).

The 1972 amendment substituted "18 years" for "21 years".

P.A.1972, No. 28, § 2 provides:

"This act does not impair or affect any act done, offense committed, or right accruing, accrued, or acquired, or liability, penalty, forfeiture or punishment incurred prior to January 1, 1972, but the same may be enjoyed, asserted, enforced, prosecuted, or inflicted as if Act No. 79 of the Public Acts of 1971, being sections 722.51 to 722.55 of the Compiled Laws of 1948, had not been passed. Proceedings pending at the effective date of Act No. 79 of the Public

than six years before institution of suit. Sullivan v. Sullivan (1942) 2 N.W.2d 799, 300 Mich. 640.

1. Expenses of cotenant

Generally, where a cotenant must account for rents, profits or value of occupancy and

use, he is entitled to a credit with respect to reasonable expenditures incurred incident to protection or maintenance of the property. Falkner v. Falkner (1975) 228 N.W.2d 461, 58 Mich.App. 558.

554.139. Lease or license of residential premises; covenants; modifications; liberal construction, inspection

Sec. 39. (1) In every lease or license of residential premises, the lessor or licensor covenants:

(a) That the premises and all common areas are fit for the use intended by the parties.

(b) To keep the premises in reasonable repair during the term of the lease or license, and to comply with the applicable health and safety laws of the state and of the local unit of government where the premises are located, except when the disrepair or violation of the applicable health or safety laws has been caused by the tenants wilful or irresponsible conduct or lack of conduct.

(2) The parties to the lease or license may modify the obligations imposed by this section where the lease or license has a current term of at least 1 year.

(3) The provisions of this section shall be liberally construed, and the privilege of a prospective lessee or licensee to inspect the premises before concluding a lease or license shall not defeat his right to have the benefit of the covenants established herein.

Historical Note

Source:

M.S.1846, c. 66, § 39, added by P.A.1968, No. 295, § 1, Eff. Oct. 1, 1968.
C.L.1948, § 554.139.
C.L.1970, § 554.139.

P.A.1968, No. 295, § 2, provides:

"This act shall take effect October 1, 1968."

P.A.1968, No. 295, was ordered to take immediate effect, and was approved July 1, 1968.

Cross References

Right of possession, amount excused for breach, see § 600.5741.

Landlord and tenant relationships, in general, see § 554.601 et seq.

Landlord-tenant law, in renting act,

in general, see § 554.631 et seq.

Construction of this section, see § 554.636.

Violations, see § 554.633.

Wilful interference with possessory interest, see § 600.2918.

Law Review Commentaries

Landlord-tenant law, conditions to terminate a rental agreement. 56 U. Det.J.Urb.L. 445 (1979).
Enforcement of housing codes—new Michigan legislation. 15 Wayne L.Rev. 836 (1969).

Real property—landlord and tenant. John E. Mogk and Brian M. Barkey, 16 Wayne L.Rev. 835, 842 (1970).

Taming of a duty; tort liability of landlords. Olin L. Browder, 81 Mich.L.Rev. 99 (1982).

554.613. Action for damages, limitations; retention of portion of security deposit, prerequisites; waiver; liability**Notes of Decisions****1. Construction and application**

Landlord waived all claimed damages and was liable to tenant for double amount of security deposit retained, where landlord failed to commence action for money judgment within forty-five days after tenant terminated his occupancy. *Hovanesian v. Nam* (1995) 539 N.W.2d 557, 213 Mich.App. 231.

Although landlord waived right to security deposit from tenant who vacated apartment before end of one year lease under Landlord-Tenant Act, he retained his common law claims for damages or unpaid rent; accordingly, landlord was entitled to rent money he lost when he was obliged to rent apartment at lower rate. *Hovanesian v. Nam* (1995) 539 N.W.2d 557, 213 Mich.App. 231.

TRUTH IN RENTING ACT**Law Review and Journal Commentaries**

Real Property: Annual Survey of Michigan Law

1997. Carl W. Herstein, 44 Wayne L.Rev. 1019 (1998).

554.632. Definitions**Notes of Decisions****Rental agreement 2****2. Rental agreement**

Documents in employment packet given to migrant farm workers by agricultural employer did not constitute written agreement embodying terms and conditions concerning use and occupancy of housing units, and so were not governed by Truth

in Renting Act, even though documents described conditions for use of housing units provided to workers by employer; rather than constituting "written agreement," documents provided workers with information regarding terms and conditions of occupancy as required by Migrant and Seasonal Agricultural Worker Protection Act (AWPA). *De Bruyn Produce Co. v. Romero* (1993) 508 N.W.2d 150, 202 Mich.App. 92, appeal denied 525 N.W.2d 455, 447 Mich. 994.

554.633. Prohibited provisions in rental agreements

Sec. 3. (1) A rental agreement shall not include a provision that does 1 or more of the following:

(a) Waives or alters a remedy available to the parties when the premises are in a condition that violates the covenants of fitness and habitability required pursuant to section 39 of 1846 RS 84, MCL 554.139;

(b) Provides that the parties waive a right established by 1972 PA 348, MCL 554.601 to 554.616, which regulates security deposits;

(c) Excludes or discriminates against a person in violation of the Elliott-Larsen civil rights act, 1976 PA 453, MCL 37.2101 to 37.2804, or the persons with disabilities civil rights act, 1976 PA 220, MCL 37.1101 to 37.1607;

(d) Provides for a confession of judgment by a party;

(e) Exculpates the lessor from liability for the lessor's failure to perform, or negligent performance of, a duty imposed by law. This subdivision does not apply to a provision that releases a party from liability arising from loss, damage, or injury caused by fire or other casualty for which insurance is carried by the other party, under a policy that permits waiver of liability and waives the insurer's rights of subrogation, to the extent of any recovery by the insured party under the policy;

(f) Waives or alters a party's right to demand a trial by jury or any other right of notice or procedure required by law in a judicial proceeding arising under the rental agreement.

Changes in text indicated by underline; asterisks * * * Indicate deletion

- (g) Provides that a party is liable for legal costs or attorney's fees incurred by another party, in connection with a dispute arising under the rental agreement, in excess of costs or fees specifically permitted by statute.

- (h) Provides for the acquisition by the lessor of a security interest in any personal property of the tenant to assure payment of rent or other charges arising under the rental agreement, except as specifically allowed by law.

- (i) Provides that rental payments may be accelerated if the rental agreement is breached by the tenant, unless the provision also includes a statement that the tenant may not be liable for the total accelerated amount because of the landlord's obligation to minimize damages, and that either party may have a court determine the actual amount owed, if any.

- (j) Waives or alters a party's rights with respect to possession or eviction proceedings provided in section 2918 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2918, or with respect to summary proceedings to recover possession as provided in chapter 57 of the revised judicature act of 1961, 1961 PA 236, MCL 600.5701 to 600.5759.

- (k) Releases a party from a duty to mitigate damages.

- (D) Provides that a lessor may alter a provision of the rental agreement after its commencement without the written consent of the tenant, or, in the case of a rental agreement between a consumer cooperative that provides housing and a member of the consumer cooperative, without the approval of the board of directors of the cooperative or other appropriate body elected by members who are also tenants of the cooperative, except that an agreement may provide for the following types of adjustments to be made upon written notice of not less than 30 days:

- at (d) Changes required by federal, state, or local law or rule or regulation.

- and (2) Changes in rules relating to the property that are required to protect the physical health, safety or peaceful enjoyment of tenants and guests.

- la. (iii) Changes in the amount of rental payments to cover additional costs in operating the rental premises incurred by the lessor because of increases in ad valorem property taxes, charges for the electricity, heating fuel, water, or sanitary sewer services consumed at the property, or increases in premiums paid for liability, fire, or worker compensation insurance.

- (m) Violates the Michigan consumer protection act, 1976 PA 331, MCL 445.901 to 445.922.

- (n) Requires the tenant to give the lessor a power of attorney

- and (2) A rental agreement shall not include a clause or provision that, not less than 90 days before the execution of the rental agreement, has been prohibited by statute or declared unenforceable by a published decision of the supreme court of this state or the United States supreme court relating to the law of this state.

- (3) A provision or clause of a rental agreement that violates this section is void.

Historical and Statutory Notes

1991FL Legislations I introduced in committee that provides for which provides in subsec. (1). The 1991 amendment in subsec. (1), in the introductory clause, substituted "that does 1 or more of the following" for "which"; in subsec. (1)(a), substituted "that" for "which"; in subsec. (1)(c), inserted "the Elliott-Larsen civil rights act," and "the Michigan handicapped civil rights act," deleted "relating to civil rights" preceding "or the Michigan" and relating to civil rights of handicapped persons," from the end, and substituted "37.1607" for "37.1605," in subsec. (1)(e), in the second sentence, substituted "does" for "shall" and in two places, "that" for "which"; in subsec. (1)(j), inserted "the revised judicature act of 1961," in subsec. (1)(k), in the introductory paragraph, substituted

Changes in text indicated by underline; asterisks * * * indicate deletion